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IN THE
Supreme Court of the United States

OCTOBER TERM, 1944.

No. 308

WILLIAM CAMMICK WAGONER,
Petitioner,
vs.

THE UNITED STATES OF AMERICA,
Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT AND BRIEF IN
SUPPORT THEREOF.**

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Supreme Court of the United States

OCTOBER TERM, 1944.

No.

WILLIAM CAMMICK WAGONER,

Petitioner and Appellant Below,

vs.

THE UNITED STATES OF AMERICA,

Respondent and Appellee below.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Hon. Harlan F. Stone, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States.

The Petitioner, William Cammick Wagoner, respectfully petitions this Honorable Court for a Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit and shows:

Summary Statement of Matter Involved.

Petitioner was indicted for failure and refusal to present himself for and to register as required by the Selective Service and Training Act of 1940 as amended (Title 50 U. S. C. A. 301 *et seq.*) (R. 1). He pleaded guilty there-

to and later, by leave of court, withdrew that plea and entered a plea of not guilty (R. 3). He elected to represent himself, although he had means to employ counsel and the court offered to appoint counsel for him which he refused (R. 3). The matter was submitted to a jury who returned a verdict of guilty (R. 29) upon which judgment was entered and Petitioner was committed to the custody of the Attorney General for imprisonment for one year and one day (R. 29). After judgment counsel was employed and within the time allowed appeal was prosecuted from said judgment to the United States Circuit Court of Appeals for the Seventh Circuit and the case there docketed January 29, 1944. The judgment was affirmed by said court June 2, 1944 in an opinion by Kerner and Minton, Circuit Judges and a dissent by Major, C. J. Petition for rehearing with supporting brief was filed and denied July 5, 1944.

Jurisdictional Statement.

The jurisdiction of this Court is invoked under Sect. 240 (a) of the Judicial Code as amended (43 Stat. 938; 28 U. S. C. A. 347) and under Rule 38 of the Revised Rules of the Supreme Court of the United States. The judgment of the Circuit Court of Appeals for the Seventh Circuit became final July 5, 1944 and this petition was filed in this Court on or before August 4, 1944. The opinion of the Circuit Court of Appeals for the Seventh Circuit has not been officially reported but is included in the record certified to this Court (R. 44).

Questions Presented.

The questions herein presented are whether an indictment charging a violation of the Selective Service and Training Act of 1940 as amended in that the accused knowingly and wilfully failed and refused to present himself

for registration and to register as by said Act required must contain allegations that the accused is a "male citizen or resident of the United States" and as such is "between the ages of 18 and 65 years" so as to constitute an offense within the purview of the Act, and

2. May material and substantial defects in an indictment which are of such a fundamental character as to make the indictment wholly invalid be cured by the evidence and verdict.

Reasons Relied on for the Allowance of the Writ.

By its opinion the Circuit Court of Appeals for the Seventh Circuit holds that an indictment charging a violation of the Selective Service and Training Act of 1940 as amended, in that the accused knowingly and wilfully failed and refused to present himself for registration and to register as by said Act prescribed need not allege that the accused is a male citizen or resident of the United States between the ages of 18 and 65 years and that if the evidence established each of the above facts the conviction must be affirmed, contrary to established principles of law as decided by this court. *United States v. Cook*, 17 Wall 168; *Ruthenberg v. United States*, 245 U. S. 480, 482 and *United States v. Hess*, 124 U. S. 483, 485.

1. The opinion of the United States Circuit Court of Appeals for the Seventh Circuit is in conflict with applicable decisions of this Court, *supra*.

2. The United States Circuit Court of Appeals for the Seventh Circuit has decided an important question of Federal Law which has not been, but should be, settled by this Court.

Conclusion.

WHEREFORE the premises considered your Petitioner respectfully prays that a writ of certiorari issue under the seal of this Court directed to the Circuit Court of Appeals for the Seventh Circuit commanding said Court to certify and send to this Court a full and complete transcript of the record and proceedings of said Circuit Court of Appeals for the Seventh Circuit had in the case numbered and entitled on its docket No. 8510, The United States of America, Plaintiff-appellee *vs.* William Cammick Wagoner, Defendant-appellant, to the end that this cause may be reviewed and determined by this Court as provided for by the Statutes of the United States, and that the judgment herein of said Circuit Court of Appeals for the Seventh Circuit be reversed by this Court and for such further relief as to this Court may seem just and proper.

WILLIAM CAMMICK WAGONER,

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Dated this 28th day of July, 1944.

